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GARVEY SQUARE COOPERATIVE BOARD OF DIRECTORS

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

HO RIM KAM,

Petitioner,

vs.

MARTIN LUTHER KING, JR.-MARCUS  
GARVEY SQUARE COOPERATIVE  
BOARD OF DIRECTORS,

Respondent.

Case No.: C 07 4414 SBA

**RESPONDENT'S OPPOSITION TO  
MOTION TO SHORTEN TIME FOR  
HEARING OF MOTION TO REMAND  
(N.D. Local Rule 6-3)**

Date: N/A

Time: N/A

Court: Courtroom 3, 3<sup>rd</sup> Floor

Judge: Hon. Sandra B. Armstrong

**I. INTRODUCTION**

There is no "good cause" for Petitioner's request to shorten time for hearing on Motion to Remand to September 11, 2007 especially where the proposed briefing schedule requires that Opposition be filed to the Motion to Remand before this Court even rules on whether it will be heard on an expedited basis! Because absent hearing on shortened notice the Motion to Remand will not be heard until October 16, 2007, in the spirit of cooperation, Respondent requests that the Motion be set for hearing on September 25, 2007, that Respondent's Opposition be due on September 14, 2007 and that Petitioner's Reply be due on September 20, 2007 to allow Respondent time to file substantive Opposition and relieve the Court of undue burden.

1 **II. ARGUMENT**

2 **A. NO GOOD CAUSE EXISTS TO HEAR PETITIONER'S MOTION TO**  
 3 **REMAND ON SEPTEMBER 11, 2007.**

4 Petitioner seeks hearing on Motion to Remand so that he can proceed to obtain expedited  
 5 writ relief. His stated basis for this Order Shortening Time is that:

6 ...Mr. Kam is being prevented from representing the Cooperative Shareholders  
 7 who elected him. Only a prompt resolution of the Writ will allow Mr. Kam and  
 8 his constituency to address critical financial issues now facing the Board. The  
 9 question of federal removal jurisdiction must be settled first. Equally important  
 10 and as shown by Mr. Kam's Verified Petition, the Board is under pressure to  
 11 make critical decisions regarding the Cooperative's finances. Because Mr.  
 12 Kam's improper removal has interrupted the Board deliberations, the Board  
 13 has either been unwilling or incapable of carrying out its responsibilities....  
 14 (Petitioner's Motion, pp.2:27-3:6).

15 Petitioner then refers the Court to his Application for Peremptory Writ of Mandamus to  
 16 figure out what he is talking about when he refers to "financial issues facing the Board."

17 Respondent submits that Petitioner's stated basis (set forth above) for an expedited  
 18 hearing and unruly briefing schedule does not show "good cause" for the relief requested. In  
 19 fact, there are no exigent circumstances to support Petitioner's request for relief:

20 First, Petitioner's vague reference without detailing "what" financial issues Petitioner  
 21 contends are "facing the Board" accompanied by his mere speculation that Board business  
 22 ceased since his automatic termination from the Board is not "good cause" for the relief  
 23 requested given the burden such will impose on Respondent and the Court.

24 Specifically, Petitioner has not cited to any pending Board meetings "to address" alleged  
 25 financial issues because no Board meetings are presently scheduled to address such issues of  
 26 corporate finance between September 11, 2007 and September 25, 2007, the date Respondent  
 27 suggests as a reasonable compromise to Petitioner's request. (Declaration of Katherine S. Catlos  
 28 [Catlos Decl.] at ¶5).

Second, a review of the Application for Writ reveals that the Board decision referenced  
 by Petitioner related to whether or not a proposal for rehabilitation and repair of the Coop would

1 be accepted. See Paragraph 4 of Kam's Redacted Declaration ["Kam Redacted Decl."] in  
 2 Support of his Application for Peremptory Writ of Mandamus. This concern does not represent  
 3 "good cause" to set the hearing for September 11, 2007 because the Board already voted and  
 4 approved the subject rehabilitation and repair proposal on July 26, 2007. (Catlos Decl. ¶5).

5 Thus, contrary to Petitioner's claim, no Board deliberations regarding financial concerns  
 6 have been "interrupted" and no such deliberations are presently set for decision on or before  
 7 September 25, 2007. Petitioner has not presented any true and valid "good cause" to support the  
 8 extraordinarily burdensome relief requested to expedite the hearing to September 11, 2007.

9 Moreover, Petitioner does not even demonstrate a "good reason" for his request to  
 10 expedite the hearing date to September 11, 2007 instead of September 25, 2007. In fact, none  
 11 exists. Notably, Petitioner claims that he was wrongfully expelled from the Board on March 13,  
 12 2007. However, Petitioner waited to file his Application for Writ until August 6, 2007. Since  
 13 Petitioner delayed five (5) months to file his Application for Writ, a two week delay to hear  
 14 Petitioner's Motion to Remand is not out of line. (Catlos Decl. ¶6).

15 **B. RESPONDENT WILL BE PREJUDICED IF TIME FOR HEARING IS**  
 16 **SHORTENED TO SEPTEMBER 11, 2007.**

17 Prior to filing the present Motion, counsel sought a stipulation that his client's Motion to  
 18 Remand be heard on September 11, 2007. At that time, Petitioner's counsel was informed that  
 19 Ms. Catlos was due to be out of the office from September 7, 2007 to September 12, 2007 and  
 20 was already scheduled for all day mediation in another matter on September 18, 2007.  
 21 Therefore, Ms. Catlos agreed to shorten time for hearing on the Motion to Remand to September  
 22 25, 2007 given conflicts with other pending legal matters. Petitioner's counsel rejected this  
 23 proposal and insisted on an extremely shortened briefing schedule. (Catlos Decl. ¶¶ 1, 7).

24 Petitioner's counsel is not being fair. Not only will an expedited hearing preclude Ms.  
 25 Catlos from attending a significant hearing, the suggested briefing schedule requires Respondent  
 26 to file a "rushed" Opposition to the Motion to Remand, a significant issue, before this Court even  
 27 rules on whether shortened time will be granted – all to Respondent's prejudice. This was  
 28 explained to Petitioner's counsel to no avail. (Catlos Declaration at ¶¶3, 4).

1 On the other hand, Respondent has suggested an organized hearing and briefing schedule  
2 which does not burden the Court and counsel. Given the present circumstances it cannot be  
3 disputed that setting Petitioner's Motion for September 25, 2007, that Respondent's Opposition  
4 be due on September 14, 2007 and that Petitioner's Reply be due on September 20, 2007, is a  
5 most reasonable compromise that provides appropriate courtesies to the Court and all counsel.

6 **C. PETITIONER'S CLAIM THAT THIS CASE SHOULD BE REMANDED**  
7 **IS NOT WELL TAKEN.**

8 Contrary to Petitioner's counsel's Declaration, Respondent's Notice of Removal was not  
9 filed in a hasty, gamesmanship manner.

10 This case arises from Petitioner's failure to accurately report his assets while applying for  
11 and receiving Section 8 Housing Assistance Payments. Petitioner's failure to report his  
12 ownership of at least one house worth over \$300,000 during the years 2001-2004 until caught,  
13 caused HUD to pay housing monies on Petitioner's behalf he would not have otherwise been  
14 entitled to receive. Once Petitioner's conduct was discovered by HUD (which also apparently  
15 took into account that the relevant event was the third time that Petitioner and members of his  
16 household had concealed assets), HUD issued a directive to Respondent Board invoking the  
17 Coop's Bylaws which provided for automatic removal of Petitioner from the Board due to his  
18 arrearages in back rents owed and not paid on demand or for months thereafter. Left with no  
19 choice but to follow HUD's mandate given the nature of the Coop's structure and governing  
20 documents, the Board followed HUD's directive and brought the Coop in compliance with its  
21 Bylaws. (Catlos Decl. ¶8.)

22 Accordingly, Petitioner's claim is necessarily premised on the claim that HUD's  
23 allegations (leading to his removal) were erroneous and unfounded. This in turn requires  
24 resolution of the issue of whether HUD's action was appropriate.

25 Respondent's removal of this case to this Court was based on good faith and well  
26 founded and substantial analysis and research. Respondent intends to present to this Court  
27 detailed factual and legal support of its bona fide decision to remove this case to the present  
28 jurisdiction and merely requires sufficient time to do so.

1 **III. CONCLUSION**

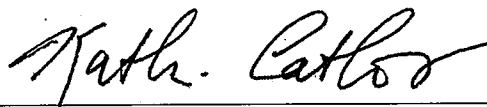
2 For all of the foregoing reasons, Respondent respectfully requests that Petitioner's  
3 Motion to Shorten the Time for Hearing on Motion to Remand to September 11, 2007 which  
4 adopts a briefing schedule requiring Respondent to file Opposition no later than September 6,  
5 2007 be denied.

6 In the alternative, if this Court is inclined to grant Petitioner's request and the Court's  
7 calendar permitted, Respondent respectfully requests that Petitioner's Motion to Remand be set  
8 for hearing on September 25, 2007, that Respondent's Opposition be due on September 14, 2007  
9 and that Petitioner's Reply be due on September 20, 2007 to allow Respondent time to file  
10 substantive Opposition and relieve the Court of undue burden.

11  
12 Respectfully submitted,

13 DATED: September 5, 2007

**KAUFMAN DOLOWICH & VOLUCK LLP**

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16 Katherine S. Catlos, Esq.

17 Attorneys for Respondent MARTIN LUTHER  
18 KING, JR.-MARCUS GARVEY SQUARE  
19 COOPERATIVE BOARD OF DIRECTORS  
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